

S. G. MASTRIANI CONSTRUCTION

CONTRACT NO. V693C-358

**VABCA-4892**

VA MEDICAL CENTER  
WILKES-BARRE, PENNSYLVANIA

**James M. Tressler, Esq.**, O'Malley & Harris, Scranton, Pennsylvania, for the Appellant.

**Stacey North Willis, Esq.**, Trial Attorney; **Charlma Jones, Esq.**, Deputy Assistant General Counsel; and **Phillipa L. Anderson, Esq.**, Assistant General Counsel, Washington, D.C., for the Department of Veterans Affairs.

### **ORDER DISMISSING APPEAL**

1. The Board, in its October 15, 1996 ORDER TO SHOW CAUSE, noted that, from the documents before it, this appeal appeared to be untimely. Correspondence received from the Appellant indicated that the Appellant was appealing a Final Decision dated February 5, 1996. However, the Notice of Appeal was delivered, by private carrier, on May 20, 1996, one hundred five (105) days after the date of the final decision. The *Contract Disputes Act* (CDA), 41 U.S.C. § 601 et seq., provides in § 606 that:

Within *ninety days* from the date of receipt of a contracting officer's final decision under section 605 of this title, the contractor may appeal such decision to an agency board of contract appeals, as provided in section 607 of this title [emphasis supplied]

The time limitation on the filing of an appeal, as a statutory waiver of sovereign immunity, must be strictly construed. Thus, the Board is without discretion to assume jurisdiction over an appeal not filed within ninety days. ***Cosmic Construction Co. v. United States***, 697 F.2d 1389 (Fed. Cir. 1982); ***Olympus Corporation***, VABCA No. 3550, 92-2 BCA ¶ 24,856; ***Surgical Appliance Industries, Inc.***, VABCA No. 3674, 93-1 BCA ¶ 25,364.

2. We granted the Appellant until October 21, 1996 to show cause why this appeal should not be dismissed for lack of jurisdiction, pursuant to Board Rule 5. As of this date, no reply has been received from the Appellant.

3. Given the facts before the Board and the failure of the Appellant to respond, we conclude that we are without jurisdiction to consider this matter. Accordingly, the appeal of S. G. Mastriani Construction, VABCA-4892, is hereby dismissed pursuant to Board Rule 5.

**IT IS SO ORDERED**

DATE: **October 23, 1996**

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WILLIAM E. THOMAS, JR.

Administrative Judge  
Panel Chairman

wE cONCUR:

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DAN R. ANDERS  
Administrative Judge

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GUY H. McMICHAEL  
Administrative Judge